

In the Matter George Johnson, Deptford Township
CSC Docket No. 2012-891
(Civil Service Commission, decided June 6, 2012)

The Superior Officers Association of PBA Local 122 (SOA), represented by James Katz, Esq., appeals the decision of the Division of Classification and Personnel Management (CPM) which concluded that Deptford Township's temporary appointment of George Johnson to a Police Lieutenant position, even though there was an existing eligible list of four names, did not violate *N.J.A.C. 4A:4-1.7*.

By way of background, an examination for Police Lieutenant (PM2553L) was announced with a closing date of June 22, 2009. Eight applicants, including Johnson, applied for and were admitted to the written examination which was held on September 24, 2009. It is noted that Johnson failed the written examination. The resulting eligible list of seven names promulgated on February 4, 2010 and expires on February 3, 2013. On December 14, 2010, a certification comprised of two eligibles remaining on the PM2516J eligible list for Police Lieutenant and the first three ranked eligibles from the PM2553L eligible list was issued. The appointing authority returned the certification, appointing the two eligibles from the PM2516J eligible list and the first and third ranked eligibles from the PM2553L eligible list. It noted that the remaining eligible was retained as interested, but others were appointed.

On August 1, 2011, the appointing authority appointed Johnson, temporarily, to the title of Police Lieutenant. Thereafter, the SOA filed a complaint with CPM arguing that Johnson's temporary appointment was inappropriate since there was a complete eligible list for the title of Police Lieutenant and therefore, any appointment should have been made from that eligible list. In support, it submitted an organizational chart, effective July 1, 2011, which indicated that George Johnson was the "Acting Commander" of the Criminal Investigations Division.¹ It also submitted a notice for the August 1, 2011 swearing in of several officers, including Johnson to the rank of Temporary Lieutenant. The appointing authority maintained that the appointment of Johnson as the Acting Commander was not intended to be a permanent position. Rather, it was a temporary appointment that was not to last more than six months, until the Chief of Police identified the best candidate for a permanent assignment. In this regard, it noted that it "ruled out" the four eligibles on the subject eligible list as not being suitable for the position at issue, and instead appointed Johnson, since his qualifications and experience were more relevant. In an August 29, 2011 letter, CPM determined that Johnson's

¹ The Table of Organization indicates that Johnson, as the Acting Commander, oversees three Police Sergeants, and eight Police Officer positions.

temporary appointment did not violate *N.J.A.C. 4A:4-1.7*, since that regulation was silent on the matter of whether a temporary appointment may be made when there is a complete list.

On appeal, SOA argues that CPM's determination is contrary to the underlying objectives of the Civil Service Act and the New Jersey State Constitution to ensure that appointments are made in accordance with merit and fitness. Moreover, it asserts that to allow an appointing authority to temporarily appoint an individual who failed the examination for the subject position, encourages it to openly circumvent the established promotional process. In this regard, SOA notes that there is a complete eligible list for the title of Police Lieutenant that contains the names of four eligibles who have passed the examination. However, instead of utilizing the eligible list, the appointing authority appointed Johnson as a temporary Police Lieutenant, even though he had failed the examination for the subject title. As a result, SOA argues that since Johnson failed the examination, he does not meet the requirements of the position, as required by *N.J.A.C. 4A:4-1.7(b)*.

Additionally, it argues that even if the appointing authority believes that Johnson is more qualified for the position, the use of a temporary appointment on that basis is inappropriate. In this regard, SOA asserts that the appointment of Johnson was due to a vacancy caused by the promotion of other employees and therefore, does not meet the standard for a temporary appointment pursuant to *N.J.A.C. 4A:4-1.7(a)*, which allows for a temporary appointment, of not more than six months for a short-term need, or up to one year for a position established as the result of a grant. SOA asserts that since there was no short-term grant at issue nor was the filling of the vacancy due to a short-term need, then the appointing authority was required to follow the appropriate Civil Service regulations in filling a vacancy. In this regard, it notes that in the case of a vacancy, Civil Service law and regulations provide that the examination process should be utilized as the preferred vehicle. *See N.J.S.A. 11A:4-2*. In support, it cites *In re Crowley*, 193 *N.J. Super.* 197, 210 (App. Div. 1984), where the court found that as "long as that list remains in force, no appointment can be made except from that list." SOA asserts that the appointing authority's actions in the instant matter are an obvious attempt to circumvent Civil Service law, by basically stating that since it did not like any eligible on the eligible list, it was going to disregard the eligible list and appoint Johnson.

In response, the appointing authority, represented by Kathleen M. Bonczyk, Esq., argues that SOA is incorrectly attempting to suggest the existence of a legislative intent to prohibit temporary appointments when a complete list is in existence. The appointing authority maintains that since *N.J.A.C. 4A:4-1.7* is silent as to the effect of a complete eligible list, then such a requirement cannot and should not be read into *N.J.A.C. 4A:4-1.7*.

In response, SOA reiterates that Johnson's appointment was to fill an existing position in the table of organization and not to fill a short term need such as a seasonal position or grant filled position, or that there was some emergency need which made filling it impossible. Moreover, it asserts that *N.J.S.A.* 11A:4-13(c) and (d) make it clear that temporary appointments were never intended to encompass existing permanent positions, but were instead designed for short-term needs. Finally, SOA asserts that even though personnel records now indicate that Johnson has been returned to his permanent title of Police Sergeant, effective January 1, 2012, he continues to serve in the same position as Commander of the Detective Bureau and he continues to earn the same salary as when he was in the temporary appointment of Police Lieutenant.

CONCLUSION

Initially, SOA maintains that the temporary appointment of Johnson was inappropriate because it was to a permanent position, and not a temporary position, and there was a complete eligible list for the title resulting from an examination which Johnson had failed. The Commission is troubled by the appointing authority's assertion that it appointed Johnson because it "ruled out" the four eligibles on the subject eligible list as not being suitable for the position at issue, and instead appointed Johnson, since his qualifications and experience were more relevant. However, the appointing authority's reason is not appropriate for a temporary appointment. A temporary appointment is to be utilized to fill a short-term need, where a permanent appointment is not appropriate, for example, a seasonal position or a position that is funded by a short term grant. *See N.J.S.A.* 11A:4-13(c). In the instant matter, the position at issue is a permanent position which is vacant due to retirements. Therefore, the appropriate way to fill the position was with a permanent appointment since there is a complete eligible list for the title. The appointing authority is cautioned that, in the future, temporary appointments must be made in accordance with *N.J.A.C.* 4A:4-1.7.

Although personnel records indicate that no employees are currently serving provisionally in the title of Police Lieutenant, SOA maintains, and the appointing authority does not dispute, that Johnson continues to perform the same duties and that he continues to receive the same salary. *N.J.S.A.* 11A:3-1 and *N.J.A.C.* 4A:3-3.1(a) provide that each position in the career and unclassified services shall be assigned by this agency to a job title. *N.J.A.C.* 4A:3-3.1(b) provides that positions in the career service shall be assigned on the basis of a job analysis, which describes the duties and responsibilities to be performed and the level of supervision exercised and received, and minimum education and experience requirements. Moreover, *N.J.A.C.* 4A:3-3.4 provides that no person shall be appointed or employed under a title not appropriate to the duties to be performed nor assigned to perform duties other than those properly pertaining to the assigned title which the employee holds. Since the Commission cannot determine on the existing record the title to

which Johnson should be classified, it is appropriate that this matter be referred to CPM for a classification review of Johnson's position.

ORDER

Therefore, the Commission orders that the Division of Classification and Personnel Management perform a classification review of George Johnson's position and issue its determination to Johnson, Deptford Township and the Superior Officers Association of PBA Local 122 within 60 days of the date of this decision.

If it is determined that Johnson is performing the duties of the title of Police Lieutenant, it is ordered that he be immediately separated from that position. Additionally, it is ordered that a certification from the Police Lieutenant (PM2553L), Deptford, eligible list thereafter be issued against that position and Deptford Township make a permanent appointment from that list.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.